A.F.R. 29

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

WRIT PETITION NO.6020 OF 2005

PETITIONERS :

1. Hira Ram Cherva S/o Bachhu Cherva, Aged about 35 years, R/o Village lakhanpur, Tahsil: Surajpur, District Surguja (CG)
2. Smt. Shanti Bai W/o Ramprasad Cherva, Aged about 45 years, R/o Village Lakhanpur Tahsil: Surajpur, District Surguja (CG)
3. Kisun S/o Phenku Panika, Aged about 25 years, Village Lakhanpur, Tahsil: Surajpur, District: Surguja (CG).
4. Gulal S/o Bachhu Cherva Aged about 60 years, Village Lakhanpur, Tahsil: Surajpur, District Sugjuja (CG).

Versus

RESPONDENTS:

1. The State of Chhattisgarh Through: The Secretary, Department of Revenue, DKS Bhawan, Raipur (CG)
2. The Collector, Surguja District Surguja (CG)
3. The Secretary, C.G. Resham Pariyojana & Swayatta Samuh, Karkoti (Lakhanpur) District Surguja (CG)

Present: Mr. F.S. Khare learned counsel for the petitioners.
Mr. Sanjay S. Agrawal, learned G.A., for the State of C.G.

ORAL ORDER

(Passed on 9th of January, 2006)

In this writ petition, the petitioners have impugned the order of the Collector, Surguja, the second respondent herein, dated 20/08/1999 granting ten hectares of land comprised in Khasra Nos. 113 and 91 of Karkoti (Lakhanpur) village, Patwari Halka No.18, which land is hereinafter shortly referred to as "the schedule land", in favour of Chhattisgarh Resham Pariyojana & Swayatta Samuh, the third respondent herein, under the Revenue Book Circular. It is the case of the petitioners that

they have been in unauthorized occupation of the schedule land from the year 1966 and the Government and Governmental authorities never objected to their unauthorized possession at any point of time and therefore, the schedule land ought not to have been granted in favour of the third respondent.

(2) I heard the learned counsel for the parties. Shri Sanjay S. Agrawal, learned Govt. Advocate, at the threshold, contended that this writ petition is liable to be dismissed in *limine* on the ground of delay and laches only because the writ petition was filed after a lapse of 6 years and more from the date of impugned order and no explanation was offered for the inordinate delay. He also contended that there is no merit in the case.

(3) There is no necessity for me to appreciate the above grievance of the petitioners brought before the Court in any detail. It is, because, this writ petition, in my considered opinion, is liable to be dismissed in *limine* solely on the ground of delay and laches besides other grounds.

(4) Although the power of the High Courts under Article 226 of the Constitution is discretionary and no limits can be placed upon that discretion, that power must be exercised along recognized lines and not arbitrarily and subject to certain self-imposed limitations. Therefore, the application for writ and/or order may be refused by the High Court upon a consideration of certain circumstances as disentitling the applicant to relief even though he may have legal right which has been infringed. One of the circumstances to refuse relief to an applicant is that the conduct of the applicant is such that he does not deserve the discretionary remedy because he is guilty of laches or undue delay or that he has not come with clean hands. Though there is no specific period of limitation, the High

(87)

Court may refuse to exercise the extraordinary discretionary power conferred upon it under Article 226 of the Constitution where the petitioner is guilty of laches or undue delay, for which there is no satisfactory explanation. Unless the facts and circumstances of the case clearly justify the laches or undue delay, the petitioners, the citizens or otherwise, would not be entitled to relief. This position is well settled by the judgments of the Supreme Court in umpteen number of cases and to cite a few are the decisions in **State of Haryana Vs. Bhajanlal**[1], **State of Orissa Vs. Arun Kumar Patnaik**[2] **State of Mysore Vs. Kangan, V.K.**[3], **Jagadambika Pratap Singh, Raja Vs. C.B.R.**[4], **Durga Prasad Vs. Chief Controller, Import & Export**[5], **Khub Chand Vs. State of Rajasthan**[6], **Chandra Bhushan Vs. Dy. Director of Consolidation, U.P.**[7], **Babu Singh Vs. Union of India**[8], **Ashok Kumar Vs. Collector**[9], **Ramesh Kumar Vs. Technological Institute of Textile**[10], **State of M.P. Vs. Nand Lal**[11], **Mirza Majid Hussain Vs. State of M.P.**[12], **Chandigarh Administration Vs. Jagjit Singh**[13], **Larsen & Toubro Ltd., State of Gujrat**[14], **Rasheed Vs. Director of Mines and Geology**[15], **State of Orissa Vs. Dhobei Sethi**[16], **Municipal Corporation of Greater Bombay Tyres Vs. Bombay International Ltd.**[17], **Municipal Council Ahmednagar Vs. Shah Hyder Beig**[18], **State of Maharashtra Vs. Digambar**[19]. All that the High Court has to see is whether the laches on the part of the petitioner are such to disentitle him to relief claimed by him. The delay, however, is not an absolute bar where the delay is properly explained and to the satisfaction of the Court or where the delay has been caused by the party raising the ground of delay. As regards the lapse of

---

1. (1992) Supp. (1) SCC 335: AIR 1992 SC 604
2. AIR 1976 SC 1639: (1976) 3 SCC 579
3. AIR 1975 SC 2190: (1976) 2 SCC 895
4. AIR 1975 SC 1816: (1975) 4 SCC 578
5. AIR 1970 SC 769: (1969) 1 SCC 185
6. AIR 1967 SC 1074: 1967 (1) SCR 120
7. (1967) 2 SCR 286: AIR 1967 SC 1272
8. AIR 1979 SC 1713: (1981) 3 SCC 628
9. AIR 1980 SC 112: (1980) 1 SCC 180
10. AIR 1981 SC 1200: (1981) 2 SCC 268
11. AIR 1987 SC 251: (1986) 4 SCC 566
12. (1995) 2 SCC 422: AIR 1995 SC 2243
13. (1995) 1 SCC 645: AIR 1995 SC 705
14. (1998) 4 SCC 387: AIR 1998 SC 1608
15. (1995) 4 SCC 584: AIR 1995 SC 1739
16. (1995) 5 SCC 583
17. (1998) 4 SCC 100: AIR 1998 SC 1629
18. (2000) 2 SCC 48: AIR 2000 SC 671
19. (1995) 4 SCC 683: AIR 1995 SC 1991.

(32)

time that would be considered as constituting delay, the proper view is that no hard and fast rule can be laid down in the matter and each case should be decided according to its circumstances, without adhering to any fixed period, long or short. In other words, there may be inexcusable delay even where the application is filed within a month or two of the order complained of. On the other hand, the Court may interfere in appropriate cases even where the application is filed beyond a considerable time-gap. The real test to determine delay is that the petitioner should come to the writ Court before a parallel right is created and the lapse of time is not attributable to any laches or negligence of the petitioner. The test is not the physical running of time. It is true that where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches.

(5) In the premise of the above principles let us look at the facts of this case. This writ petition was presented in this Court on 18/11/2005, after a lapse of more than six years from the date of the impugned order. I have carefully perused the averments in the writ petition. Not a word of explanation is offered for inordinate delay of more than six years. On the other hand, in the writ petition, quite curiously, it is claimed that there is no delay in filing the writ petition. Learned counsel for the petitioner, however, in the course of the submission stated that the petitioner had made a representation to the District Collector, Surguja, the second respondent herein, and he did not receive any response from the District Collector and therefore, the petitioner did not file the writ petition earlier. This statement made in the course of the argument, that too, without support of the pleading, is not acceptable to me for more than one reason. At the threshold, it needs to be noticed that the socalled representation said to have been made by the petitioner to the second respondent is not

statutory in character and it is an extra legal representation. The judgment of the Supreme Court in **Naib Subedar Lachhman Dass Vs. Union of India**[20] is an authority to state that pursuing an ill-conceived remedy is not a proper explanation for delay.

(6) Be that as it may, on merit also, I do not find any failure of justice. The second respondent granted the schedule land to the third respondent as far back as on 20/08/1999. By this time, the third respondent which is an institution must have utilized the schedule land. It would be totally inequitable and unjust at this distance of time to upset the settled matter. Secondly, simply because, the petitioners were in unauthorized occupation of the schedule land before the grant in favour of the third respondent, that fact itself would not invest any enforceable right in the petitioners either to claim that the schedule land should have been granted to them as a matter of obligation by the State and State authorities or to contest the validity of the grant made in favour of the third respondent.

(7) Looking from any angle, I am of the considered opinion that it is not a fit case where the Court should step-in under Article 226 of the Constitution and interfere with the impugned grant order made in favour of the third respondent as far back as on 20/08/1999. The writ petition is, therefore, dismissed both on the ground of delay and laches as well as on merit, however, with no order as to costs.

Sd/-
Chief Justice

20. (1977) UJSC 365: AIR 1977 SC 1979: (1977) 2 SCC 584